

## Workers' Compensation Reform Will Aid Employees, Employers

By Chuck Poochigian

California's dysfunctional workers' compensation system, fraught with delay, confusion, and contentiousness, has failed both employers and employees.

Governor Schwarzenegger's signature on my SB899 should help to overhaul our method for treating workplace injuries, and fix many of the problems that have led to our highest-in-the-nation costs.

Our workers' compensation crisis has adversely affected the state's economy. To gauge the magnitude of the problem, consider that our country created more than 300,000 jobs in March. California's contribution was roughly 5,000 jobs, only 1.7 percent of the total, although we are home to 12 percent of the nation's population.

In recent years virtually every employer - including businesses, local governments, school districts and non-profits - has confirmed that skyrocketing costs are draining them of scarce resources. These costs reduce profits and siphon off funds that otherwise could have been expended to hire more employees, provide pay raises, increase benefits or expand operations.

An unprecedented level of statewide grassroots activism brought this issue to the forefront, and fueled the drive for reform. Coupled with Gov. Arnold Schwarzenegger's election, and his pledge to improve our state's abysmal business climate, an overhaul of our broken workers' compensation system became a top priority.

Legislative action on this problem didn't happen overnight. In large part,

the reality of a looming ballot initiative campaign spawned lawmakers' desire to craft a bipartisan compromise to effect reform legislatively.

The final bill was a true compromise that earned broad bipartisan support, and passed with an overwhelming super-majority in the Legislature, receiving only six "No" votes from both houses combined. The consensus was a victory for both employers and employees.

Our just-passed reforms will restore common sense and objectivity to a system that clearly has not worked as intended. Consider the following:

■ California's employers are paying approximately \$6.30 per \$100 in payroll compared to the national average of \$2.46 per \$100 in payroll.

■ Some employers' premiums have increased by 400 percent in recent years.

■ More than 30 percent of permanent disability claims end up in litigation - a far higher percentage than any other state.

■ California has the worst return-to-work ratio in the country.

■ Injured workers average 71 percent more medical visits than in other states.

■ The average medical claim in California exceeds \$35,000 compared to nationwide costs of \$15,300.

■ California's quasi-public State Compensation Insurance Fund - intended to be the insurer of last resort - now holds 50 percent of the insured market, a clear indication that something is very wrong.

The recently-signed reform legislation attempts to remedy many

of these problems, and represents the culmination of hundreds of hours of negotiation conducted under an overarching set of principles. Our No. 1 priority was to reduce costs significantly while providing injured workers all medically necessary care to get them treated and back to work as soon as possible.

SB899 ensures that injured workers receive immediate medical care to enable them to get their lives back on track. The law provides that injuries will be diagnosed and treated according to nationally recognized medical guidelines, as is done in many other states, thus ensuring that workers receive care appropriate for their injuries.

Affording injured workers immediate medical treatment also will reduce contentiousness between employers and employees over treatment and who pays the bills, which can lead to excessive litigation. Getting injured workers treated and back to work with as little disruption as possible is a fundamental goal of the reform, and should help to significantly reduce hardships imposed on both injured workers and the employers who rely on them.

Contrary to misleading rhetoric used by protectors of the status quo, "company doctors" and "company clinics" are pure fiction. The new law will create networks of qualified physicians from which injured workers may choose, similar to group health networks. This will help to eliminate "doctor shopping," while improving patient choice. Injured workers may obtain second and third opinions from within the network if they have any questions on care.

In the event that injured workers are dissatisfied with the diagnosis or care they are receiving in the network after three opinions, they may request an assessment from an independent medical review. This state-approved panel of qualified physicians will evaluate the injured worker's condition. If deemed appropriate, the worker will continue to receive care within the network.

If their treatment is found insufficient, they may then seek attention from a physician outside of the network.

The independent medical review will help to eliminate the "dueling doctors' reports" currently driving up costs in our system, and will help to ensure that doctors, not lawyers and judges, are making medical decisions.

Our current system also has been found to provide arbitrary and inconsistent temporary and permanent disability awards for virtually identical injuries, which has contributed to costly, time-consuming litigation. Under the reform law, the formula will be revised to ensure that benefits are quantifiable and predictable, based on American Medical Association guidelines. Increasing objectivity will further reduce the need for legal action, thus benefiting injured workers as well as employers.

Under the new law, employers will not be held liable for disability payments arising from pre-existing illnesses, or conditions and injuries unrelated to their employment, which is as the law was intended. Permanent disability payments will be apportioned so that employers pay for the percentage of disability caused by injuries occurring in the workplace. Additionally, the payment schedule is adjusted to increase benefits to the most severely injured workers.

The law inserts common sense into the late-payment penalty structure, assessing penalties based on the late payment itself rather than on the entire award, and capping the penalty at \$10,000. It also clarifies that the private attorney general cause of action contained in last year's SB796 is not applicable to workers' compensation cases.

Employees' benefits will be increased if they are unable to return to work or their employer cannot or will not offer a modified work assignment. Employees who are offered an alternative position at full salary and deemed fit to perform their duties will receive a reduced disability benefit.

These incentives will encourage both employers and employees to work together to get the worker back on the job.

Some detractors have made the disingenuous claim that severely disabled workers would receive no benefit if their earning capacity was technically unaffected. In truth, disability awards are determined based on a formula which assesses a variety of factors, including the severity of the injury and the worker's age, occupation and future earning capacity.

Earning capacity, therefore, is only one of the factors which affects the final award. The new formula will stabilize our system of awarding temporary and permanent disability awards and further reduce contentiousness that leads to litigation.

Lower premiums are everyone's ultimate goal. However, increased regulation of private insurers is counter-productive to our goal of restoring a healthy and competitive marketplace. More than 25 companies have left the insurance market in the last five years. Currently, only 20 percent of the policies are written by private

insurers. Even while taking bold steps to improve their safety record, self-insured public and private employers have been pummeled by proliferating costs. To focus on private insurance rate regulation ignores 80 percent of the problem.

As system costs and losses are brought under control, I am optimistic that insurers will return to our state and premiums will come down. The new law contains a prospective two-year study to monitor insurer premiums and profits to assess whether premiums are reduced as a result of increased competition.

Together, these provisions represent significant progress in our effort to repair the system. Injured workers will benefit as we reduce inconsistencies and delays which contribute to excessive costs and hinder their ability to return to work. Medical decisions will be made by health professionals, in order to ensure prompt, appropriate medical care. Disability awards will be much more consistent and fair.

The final compromise will improve the overall delivery and quality of care provided to injured workers, while streamlining the system and lowering costs. What has been accomplished is not perfect, and more inevitably will need to be done. However, the workers' compensation overhaul of 2004 should be seen as a major step toward bringing California's costs in line, and removing a severe disincentive to job creation in our state.

**State Sen. Charles "Chuck" Poochigian**, R-Fresno, an attorney, is chairman of the Senate Republican Caucus, and Assistant Republican Leader. He was the author of SB899.